

ANTONY R. PETRILLA
ATTORNEY-AT-LAW

SWIDLER
&
BERLIN
CHARTERED

DIRECT DIAL
(202)424-7845

DOCKET FILE COPY ORIGINAL

July 25, 1997

RECEIVED
JUL 25 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND-DELIVERY

William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments of PhoneTime Inc. On MCI Petition for Rulemaking; RM-9108

Dear Mr. Caton:

Enclosed please find an original and four copies of the Comments of PhoneTime Inc. on MCI Petition for Rulemaking in the above-referenced proceeding. Please date-stamp the extra copy provided and return it to the messenger.

A copy of the Comments on 3.5" diskette and in WordPerfect Format 5.1 has been sent to Darius Withers at the Common Carrier Bureau.

Thank you for your attention to this matter.

Sincerely,



Antony R. Petrilla

Counsel for PhoneTime Inc.

Enclosures

198707.1

No. of Copies rec'd 074
List A B C D E

RECEIVED

JUL 25 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MCI TELECOMMUNICATIONS CORPORATION)	RM-9108
)	
Billing and Collection Services Provided)	
By Local Exchange Carriers for Non-Subscribed)	
<u>Interexchange Services</u>)	

COMMENTS OF PHONETIME INC. ON MCI PETITION FOR RULEMAKING

PhoneTime Inc. ("PTI"), through undersigned counsel, hereby submits its comments on the Petition for Rulemaking ("Petition") filed by MCI Telecommunications Corporation ("MCI") on May 19, 1997 in the above-captioned proceeding.

STATEMENT OF INTEREST

PTI began offering retail interexchange services in 1995 and now is widely believed to be the Nation's leading provider of pre-paid debit cards in the retail long distance industry. PTI is a switch-based provider, with a switch currently located in Piscataway, NJ and four more switches planned for installation in Florida, California, New York and Texas in 1997.

INTRODUCTION AND SUMMARY OF ARGUMENT

In response to MCI's Petition, PTI urges the Commission to initiate a rulemaking on billing and collection services that ILECs render to interexchange carriers ("IXCs") providing non-subscribed interexchange services (*e.g.*, collect, third-party, 10XXX, and "joint use" calling

card calls) as well as presubscribed services.¹ Currently, under billing and collection agreements with IXCs and independent service bureaus, ILECs consolidate charges for use of non-subscribed and presubscribed interexchange services with charges for local service and send customers a single bill. MCI states that ILECs seek to renegotiate these agreements at materially higher rates and are supporting their position with a “take it or leave it” negotiating stance.” Petition, at 2.

PTI opposes this development and urges the Commission to take measures to avert this blatant exercise of ILEC market power. The following sections demonstrate that: (1) ILECs have an incentive to subvert IXCs’ ability to compete in the interexchange market through their control of billing and collection services; (2) IXCs could not practically take over the billing and collection functions for non-subscribed interexchange services that ILECs perform and would face significant adversity in doing so for presubscribed interexchange services; and (3) the Commission should promulgate appropriate nondiscrimination principles and an ILEC duty to negotiate in good faith the terms of billing and collection agreements. The Commission must act now to protect competition in the interLATA market and burgeoning competition in the intraLATA market.

ARGUMENT

I. ILECS HAVE ECONOMIC INCENTIVES TO UNDERMINE IXCS

ILECs have very specific economic incentives to sabotage IXCs. Independent ILECs, such as GTE, Rochester Telephone Company, and SNET, currently provide interexchange

¹ Although MCI focused its Petition only on non-subscribed interexchange services, PTI believes that MCI’s arguments apply with nearly equal force to presubscribed services. Accordingly, these comments discuss billing and collection issues related to both types of interexchange services.

services within and without their services areas. They are direct competitors of IXC and have undeniably powerful incentives to abuse their control of billing and collection services in order to increase the operating costs of IXC competitors. Regional Bell Operating Companies (“RBOCs”) are direct competitors of IXC in out-of-region interexchange markets and are actively in the process of seeking authority to enter in-region, interexchange markets. RBOCs have incentives to subvert IXC, by increasing IXC’s operating costs and denying them access to vital customer data, in order to enhance both their out-of-region interexchange operations and their anticipated in-region interexchange operations.

Moreover, ILECs have the ability to harm the operations of their IXC competitors without compromising their own operations. While ILECs could impose severe hardships on IXC by forcing them to direct bill customers,² as explained more fully below, ILECs would not impair or impede their own operations in the process. For the most part, ILECs are unaffected by billing and collection costs of local service because they, unlike IXC, have already built the cost of rendering bills into their rates. Although the vast majority of ILECs are price-cap companies, both this Commission and state commissions set price caps for ILECs by referencing the price structures formerly employed in rate of return environments. Those price structures undoubtedly recovered costs associated with rendering local service bills. ILECs that wish to damage either present or future long distance competitors have every incentive to become less cooperative in regard to billing and collection. In order to wound their competitors, such ILECs may be eager

² In the event that IXC choose not to direct bill customers, but agree to pay the outrageous rates that ILECs propose, ILECs will reap supracompetitive profits and, in that manner, increase IXC operating costs.

to sacrifice short-term revenues that they derive from providing billing and collection services to IXC's in exchange for capturing long-term market share.

II. THE ROLE OF ILECS IN PERFORMING BILLING AND COLLECTION FUNCTIONS FOR NON-SUBSCRIBED AND PRESUBSCRIBED INTEREXCHANGE SERVICES IS ESSENTIAL

The billing and collection services that ILECs perform for IXC's are essential to the continued development of the interexchange market. ILEC efforts to raise rates for billing and collection services drastically are tantamount to canceling billing and collection agreements. As shown below, IXC's realistically cannot take over billing and collection functions for non-subscribed calls and would have considerable difficulty doing so for presubscribed services.

A. Only the ILEC Has Access to the Necessary Customer Billing Name and Address Information to Bill and Collect for Use of Non-Subscribed Interexchange Services

When a customer places a non-subscribed call, the IXC handling the traffic does not have the billing name and address ("BNA") of the party to be billed. The IXC knows only the telephone number of the billed party. Ordinarily, that individual has no pre-existing relationship with the IXC, such that knowing the party's telephone number does not mean that the call can be billed economically. Traditionally, there have been few problems with this system because ILECs have billed and collected amounts due under common billing and collection agreements. However, if ILECs refuse to enter such agreements with IXC's except at outrageous rates and terms, as MCI alleges that ILECs plan to do, providers of non-subscribed interexchange services will be disadvantaged in the first instance by their lack of access to customers' BNA. Petition, at 2, 6. ILECs will use their bottleneck control of BNA information against IXC competitors. As MCI properly notes, this information can be gathered only by posing expensive BNA queries to

ILECs (typically around \$0.20/query, but ranging up to \$0.80/query), and the resulting BNA is limited to the call queried and cannot be used for other calls placed by the same customer. Petition, at 7, 8. As explained below, the economic feasibility of direct billing for non-subscribed calls is highly questionable.

B. The Economic Feasibility of IXC's Rendering Bills for Non-Subscribed Interexchange Services and, to a Certain Extent, for Presubscribed Interexchange Services Is Doubtful

The cost of rendering separate long distance bills is relatively high — claimed to be as high as \$3.47 per invoice by MCI — and is likely to exceed the amounts owed in the case of non-subscribed services in which each call to be billed requires a costly BNA query. Petition, at 7. For a variety of reasons, users of non-subscribed services typically generate only low calling volumes. Such reasons may include:

- (1) **need:** users often place collect and third-party billed calls only when no other alternative method of payment is available;
- (2) **sampling:** customers sample many long distance carriers without concentrating their calls on the network of a single IXC; and
- (3) **opportunity:** customers do not place a large amount of long distance calls in general.

Additionally, in the absence of ILEC billing and collection agreements for non-subscribed traffic, there would be an incentive for a customer to place each non-subscribed call over a different IXC network to minimize the chances of being billed. Forcing IXCs to issue separate bills for the many customers that place non-subscribed calls, but that usually do not incur enough toll charges to offset billing costs, simply would not lead to an efficient outcome.

IXCs would experience similar problems separately billing presubscribed services if the revenues generated by the average end user are engulfed by the average cost of producing bills. IXC's would not be able to perform their own billing and collection functions economically if their end users on average make only low to moderate use of presubscribed interexchange services. These IXC's would be forced to endure losses or place a surcharge on the long distance bills of low-use consumers to cover billing costs. Either result would make them far less competitive in the market and harm interLATA competition overall, aiding ILEC marketing efforts.

On the other hand, when IXC's contribute to the billing and collection costs of ILEC's, all parties benefit. With such cooperative arrangements in place, IXC's are able to serve all sorts of customers without much regard to traffic volumes, while ILEC's largely are able to offset significantly mailing and processing costs with revenues from IXC's — costs that ILEC's would incur in rendering bills for local service in any event. Plainly, the current practice of consolidating local and long distance charges on the same bill is most productive result for both ILEC's and IXC's.

C. Only the ILEC Bill Has Sufficient Credibility with End Users to Ensure Prompt Payment for Non-Subscribed and Presubscribed Interexchange Services

Customers treat the bill that they receive from the ILEC very seriously and, consequently, delinquency rates for ILEC bills are relatively low. Having operated as the sole provider of telephone service in their service areas for generations, ILEC's have accumulated tremendous credibility with customers. Of course, that credibility was one of the benefits associated with being the monopoly provider of all retail telephone service. New entrant long distance providers

have not had similar opportunities for brand-name exposure and, when billing customers directly, typically suffer high delinquency rates and substantial uncollectibles, undermining their ability to compete in the interexchange market. Providers of non-subscribed services are especially vulnerable because customers have no relationship whatsoever with these IXC's. The Commission should recognize that, as historic and present de facto monopolists, ILECs are in a unique position to issue bills for non-subscribed and presubscribed services that customers will pay.

Moreover, the overwhelming majority of customers prefer to receive only one bill for all telephone service. Over the many years in which ILECs, either as part of the Bell System or on their own after divestiture, issued consolidated local and long distance bills, customers have become accustomed to receiving a single bill and generally resist separate billing. It would be unrealistic to expect IXC's to be able to recover amounts billed separately — especially for non-subscribed services — after such a long period of consolidated billing.

D. The Commission Must Act to Protect the InterLATA Market

In summary, the non-subscribed segment of the interexchange market is rapidly expanding and has become, as MCI pointed out, the primary vehicle for consumers to sample new interexchange services and, for low-income consumers, an extremely common method to complete most long distance calls. Petition, at 3-4. Due to the large number of customers that place non-subscribed calls over IXC's networks, the costs of terminating this traffic are substantial, even though individual bills are often quite small. If these costs go unrecovered, IXC's would be forced to discontinue non-subscribed services. The Commission must act to ensure that the market for non-subscribed calling is not disrupted by anti-competitive ILEC

strategies that would effectively end billing and collection agreements for non-subscribed services by dramatically increasing the rates charged for these functions.

The market for presubscribed interexchange services would be similarly impacted in a negative fashion if ILECs are successful in their anti-competitive efforts. Less profitable IXC would be especially vulnerable to ILEC schemes to increase the costs of billing and collection and are likely to exit or may not decide not to enter the market, reducing the number of competitors and leaving only the larger, more well-established IXCs in the market. The Commission should initiate the rulemaking proceeding requested by MCI and, in that context, craft rules that would avert this anti-competitive and otherwise undesirable result.

III. REQUESTED RELIEF: THE COMMISSION SHOULD TAKE STEPS TO ENSURE THAT ILECS CONTINUE PROVIDING NONDISCRIMINATORY BILLING AND COLLECTION FUNCTIONS FOR NON-SUBSCRIBED AND PRESUBSCRIBED INTEREXCHANGE SERVICES

The Commission should grant MCI's Petition and commence a rulemaking proceeding on ILEC billing and collection services. To eliminate ILEC incentives to undermine IXC competitors, the Commission should design a nondiscrimination principle that would require ILECs to provide IXCs with billing and collection services on the same rates, terms and conditions that they provide to themselves or their affiliates.

In addition, the Commission should create a duty for ILECs to negotiate with IXCs in good faith over the rates, terms and conditions of billing and collection agreements. Among other things, this duty at least should compel ILECs: (1) to abandon any "take it or leave it" negotiating postures; and (2) to justify proposed rates that exceed the rates in previous billing and collection contracts.

Establishing the preceding nondiscrimination principle and an ILEC duty to negotiate in good faith will protect competition in the interLATA market in the meantime.

CONCLUSION

For the foregoing reasons, the Commission should grant the Petition and initiate the rulemaking proceeding requested by MCI.

Respectfully submitted,



Margaret M. Charles
Antony Richard Petrilla
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (tel)
(202) 424-7645 (fax)

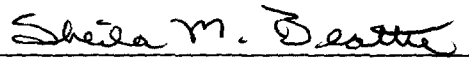
Counsel for PhoneTime Inc.

Jerome S. Ginsberg
Vice President
PhoneTime Inc.
30-50 Whitestone Expressway
Flushing, NY 11354
(718) 939-9000 (ext. 252)
(718) 762-8010 (fax)

Dated: July 25, 1997

CERTIFICATE OF SERVICE

I, Sheila M. Beattie, hereby certify on this 25th day of July, 1997, that a copy of the foregoing Comments of PhoneTime, Inc. on MCI Petition for Rulemaking, RM-9108, was served upon the parties on the attached list, via hand-delivery* or first-class mail.



Sheila M. Beattie

Darius Withers* (disk only)
Common Carrier Bureau
2025 M Street, N.W.
Room 6120
Washington, D.C. 20554

International Transcription Service*
1231 20th Street, N.W.
Washington, D.C. 20036

Mary Miller Brown
Donna M. Roberts
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

David Alan Nall, Esq.
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044